

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: G. Q. Milwee, Jr.)
Map 104-16-0, Parcel 155.00) Davidson County
Residential Property)
Tax Years 2005 & 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$100,000	\$117,900	\$217,900	\$54,475

An appeal has been filed on behalf of the property owners with the State Board of Equalization on September 30, 2005.

This matter was reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated, §§ 67-5-1412, 67-5-1501 and 67-5-1505. A hearing was conducted on July 18, 2006 at the Davidson County Property Assessor's Office. Present at the hearing were G. Q. Milwee, Jr., the taxpayer, S. Wilburn Honeycutt, Jr. of Honeycutt Engineering, Inc. and Jason Poling, Residential Appraiser, Division of Assessments for the Metro. Property Assessor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence located at 1704 Linden Avenue in Nashville, Tennessee.

The taxpayer, Mr. Milwee and his witness, contends that the property is worth \$165,000 based on his belief that because of the numerous problems with his home, the home has little or no value.¹ (Collective exhibit #2.)

The assessor contends that the property should remain valued at \$200,000. In support of this position, three comparable sales were introduced and is marked as exhibit number 1 as part of the record in this cause.

The presentation by Mr. Honeycutt shows that a lot of time and effort was put into preparing for this hearing. The taxpayers exhibits (collective exhibit #2) shows that thoughtful planning and research were used in the compilation; however, the germane issue is the value of the property as of January 1, 2005.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound,

¹ Mr. Honeycutt testified that the home has damage from water because of an underground spring. The proof also showed that there are other problems in the home that would require approximately \$11,000 to \$29,000 to repair. There were no definite estimates submitted.

intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . .”

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at \$195,000 based upon the presumption of functional obsolescence.² This is demonstrated by the numerous structural and use issues of the subject. Mr. Honeycutt has convinced the administrative judge that the subject would need substantial repairs to make it marketable.

Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The presumption of correctness that attaches to the decision from the County Board of Equalization is just that, a rebuttable presumption that can be overcome by the taxpayers' presentation.³ To hold that it is a conclusive presumption would essentially eliminate the right of a taxpayer to present evidence, that scenario is not contemplated by the Assessment Appeals Commission. In this case, the administrative judge is of the opinion that the taxpayer has presented clear and convincing evidence as to valuation of the subject property.

With respect to the issue of market value, the administrative judge finds that the taxpayer has introduced sufficient evidence to affirmatively establish the market value of subject property as of January 1, 2005, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a). The taxpayer has sustained his burden.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2005:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$100,000	\$95,000	\$195,000	\$48,750

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

² An element of depreciation (diminished value) resulting from deficiencies in the structure. *The Dictionary of Real Estate Appraisal*, 4th Ed., 2002 Functional Obsolescence is caused by flaw in the structure, materials or design of the improvement. . . *The Appraisal of Real Estate*, 12th Ed., 2001.

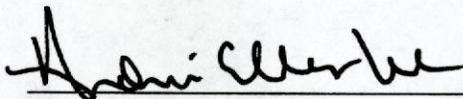
³ While there is no case law directly on point, several cases and Attorney General Opinions appear to stand for the proposition that: "If the court finds that evidence is sufficient to rebut this presumption, the court shall make a written finding. . . *Hawk v. Hawk* 855 S.W. 2d 573 (Tenn. 1993) also "[a] court is not required to assume the existence of any fact that cannot be reasonably conceived." *Peay v. Nolan*, 157 Tenn. 222,235 (1928), 1986 Tenn. AG LEXIS 64, 86-142, August 12, 1986. In administrative proceedings, the burden of proof ordinarily rests on the one seeking relief, benefits or privilege. *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 4th day of August, 2006.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. G. Q. Milwee, Jr.
Jo Ann North, Assessor of Property